State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY

JOINT COMMITTEE ON JUDICIARY

S.B. No. 1220 (RAISED):
An Act Concerning Family Violence

H.B. No. 6629 (RAISED):
An Act Concerning Domestic Violence

H.B. No. 6633 (RAISED):
An Act Concerning Stalking

March 30, 2011

The Division of Criminal Justice wishes to thank the Committee for this opportunity to comment on the following bills on the agenda for today's public hearing:

The Division recommends the Committee's Joint Favorable report for H.B. No. 6633, An Act Concerning Stalking. The Division would extend its appreciation to the Speaker's Task Force on Domestic Violence and Connecticut Sexual Assault Crisis Services (CONNSACS) for the work and effort that resulted in the drafting of this legislation. The bill strengthens our statutes to protect against stalking.

The Division also supports the underlying concept of S.B. No. 1220, An Act Concerning Family Violence, and H.B. No. 6629, An Act Concerning Domestic Violence. Again, we commend Representative Flexer and the Speaker's Task Force on Domestic Violence for the tremendous amount of effort that went into the development of these proposals. While generally in support of the overall concepts, we would raise the following reservations and offer the following recommendations which we believe would improve these bills:

Section 2 (b) of S.B. No. 1220 would require the Chief State's Attorney to establish a formal program to provide training on a quarterly basis for all prosecutors assigned to family violence matters. The Division of Criminal Justice is strongly committed to an aggressive training program for all of our employees, including those assigned to family violence matters. Family violence and domestic violence training is a regular component of our current training initiatives. The Division currently has a Senior Assistant State's Attorney and an Inspector assigned to the Violent Crimes Bureau in the Office of the Chief State's Attorney who deal exclusively with domestic violence matters. Through these employees the Division has taken a

leadership role in training law enforcement professionals in the investigation and prosecution of domestic violence matters. Our Inspector conducts extensive training for police departments throughout Connecticut. He supervised a grant funded initiative that provided special kits to municipal police departments containing equipment and materials for the investigation of domestic violence cases.

As laudable as we find the proposal to require a quarterly training program, we must note that the overriding concern with the prosecution of family violence matters lies in our ability to continue to have staff specifically dedicated to these matters. There are currently five prosecutor positions dedicated to the prosecution of domestic violence matters in the Hartford, Bridgeport, Windham, and Milford judicial districts that are funded entirely with federal funds. As we have noted in submissions to the Office of Policy and Management and the Joint Committee on Appropriations on several occasions, this federal funding has been shrinking in recent years while the costs of the positions has grown. We estimate that, over the upcoming biennium, federal funding will be adequate to fund only three of these positions. The Division has again asked the Appropriations Committee to approve the general fund pickup of two of these positions. The inability to transfer these positions would undermine our efforts to carry out the clear directive of the General Assembly for greater emphasis on the prosecution of domestic violence. We are already finding it difficult for prosecutors and other employees to simply find the time for training given the workload; further staff reductions will only leave less time for training. The training requirement envisioned in S.B. No. 1220 would be meaningless if there is no one to train or no one who can get away from the courthouse to attend training. Similarly, while the Division wholeheartedly supports the concept of section 9 (c) of the bill to establish additional dedicated court dockets for domestic violence matters, such an initiative would require substantial additional resources over and above those required to maintain the status quo. Absent any infusion of resources it would not be possible to establish additional special dockets let alone maintain the existing ones.

With regard to H.B. No. 6629, An Act Concerning Domestic Violence, the Division supports the overall concept of the bill. **We would, however, respectfully recommend the Committee's Joint Favorable Substitute report deleting sections 12, 13 and 14 in their entirety.** Several years ago the State's Attorneys reviewed cases where individuals who had obtained protective orders were charged with conspiring or accessory to violating those orders. In most cases it was determined that the charges were not appropriate. The police departments involved were so notified and the charges were dismissed or nolled. There is a clear consensus among prosecutors that such a charge should rarely, if ever, be brought, but neither should the law preclude such action in the very rare cases where the evidence clearly establishes that the charge is appropriate. For example, an individual could obtain a protective order and then solicit the subject of that order to meet in violation of the order and then have the subject arrested for violating the order.

The Division is concerned with the wording of section 4 of the bill, and specifically lines 385-387, which would make an individual charged with any felony ineligible for the family violence education program (FVEP). We would note that such individuals would still be eligible for the pretrial accelerated rehabilitation program (AR), but that in being approved for the AR program would not receive the same specialized treatment they would receive under the FVEP. Which is more appropriate – having someone charged with a family violence crime go to

counseling or anger management classes or perform completely unrelated community service under the AR program?

The Division would respectfully request the Committee's indulgence to amend section 15 of the bill to provide for a spousal abuse and child abuse exception to the confidential marital communications privilege in criminal prosecutions. The Division seeks to work with the Committee and other interested parties to develop appropriate language for such an exception. As presently drafted the language of section 15 would repeal section 54-84a of the general statutes which creates a testimonial privilege enabling a spouse to refuse to testify against his or her spouse except in certain circumstances, and replaces it with language that confuses the present statutory language and merges it with another separate privilege dealing solely with marital communications in a manner that confuses both privileges and renders inadmissible in evidence statements that should not be inadmissible. Take the example of the husband who tells his spouse, "I am going to kill you," and then goes out and hires someone to carry out crime. When he is arrested for conspiring to commit murder he can object to his words being admitted and under the language of section 15 the spouse's testimony would be inadmissible. **The Division would respectfully ask the Committee to allow for further discussions to refine the language and if that is not possible to delete section 15 in its entirety.**

The Division welcomes section 1 (h) of S.B. No. 1220, which directs the Police Officer Standards and Training Council (POST) to establish uniform protocols for investigating family violence. POST has worked in conjunction with the Division in the past to develop similar protocols and policies and we stand ready to assist in this endeavor as well. The Division believes this section renders unnecessary the task force proposed in Section 23 of H.B. No. 6629, and would respectfully recommend that the Committee delete Section 23 from H.B. No. 6629. The approach taken in section 1 (h) of S.B. No. 1220 is consistent with that found in existing law at Section 46b-38b (e) (1), which requires each law enforcement agency to develop in conjunction with the Division of Criminal Justice specific operational guidelines for arrest policies in family violence incidents. Section 46b-38b (f) further requires POST, in conjunction with the Division, to establish an education and training program for law enforcement officers on the handling of family violence incidents. There is a great potential danger to the public safety and to the police officers who respond to incidents of family/domestic violence. The policies and protocols governing the response to such an emergency situation should be determined by law enforcement and not by a task force comprised of those who despite the best of intentions have no role or responsibility for responding to immediate emergency situations where the risk of serious injury and/or death exists.

Finally, the Division has serious concerns and reservations about the revisions to the bail bond system proposed in sections 16-22 of H.B. No. 6629. We have attached separate testimony prepared by Kevin D. Lawlor, State's Attorney for the Judicial District of Ansonia-Milford, detailing our concerns with these sections of the bill. State's Attorney Lawlor conducted an intensive review of the bail bond system as it specifically relates to domestic violence incidents. The Division emphatically reiterates our longstanding belief that significant reform of the bail bond system is in order, and in fact long overdue. It is our understanding, however, that these issues are the subject of ongoing discussions with members of the General Assembly, the administration, the bail bond industry and the various agencies involved in the administration of the bail bond system. In the interests of moving the remaining sections of H.B. No. 6629

forward, the Committee may wish to defer action on the bail bond components of H.B. No. 6629 pending the outcome of these ongoing discussions and allow that issue to be addressed through another vehicle.

In conclusion, the Division of Criminal Justice reiterates its gratitude and appreciation to the General Assembly for your careful consideration of legislative initiatives to strengthen our laws to protect against domestic and family violence. The Division through its own initiatives and in response to the actions of the Legislature has sought to be a strong partner in the successful implementation of policies and practices to combat domestic violence and provide for effective prosecution. We look forward to continuing to work with the legislative and judicial branches in this important endeavor. We would be happy to provide any additional information the Committee might require or to answer any questions you might have.

State of Connecticut
DIVISION OF CRIMINAL JUSTICE

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PREPARED REMARKS OF STATE'S ATTORNEY KEVIN D. LAWLOR TO THE JUDICIARY COMMITTEE

H.B. NO. 6629 (RAISED): AN ACT CONCERNING DOMESTIC VIOLENCE SECTIONS 16-22

March 30, 2011

First of all I want to thank the members of the committee for the invitation to write to you on this important topic. I am the State's Attorney for the Judicial District of Ansonia-Milford and my testimony today is on behalf of the Division of Criminal Justice. My written remarks will focus on some of the shortcomings in our criminal justice system which my office uncovered as we investigated the murder of Shengyl Rasim on January 17, 2010. This testimony concerns one area of HB 6629, AAC Domestic Violence.

As background, on January 17, 2010, Selami Ozdemir brutally shot his young wife, Shengyl Rasim, as she held her crying infant in her arms and their young son slept in the next room. During the prior 4 months, Mr. Ozdemir was arrested by the West Haven Police Department on two separate occasions for domestic violence offenses involving his wife. On both occasions, Mr. Ozdemir was bonded out by a bail bondsman. Shortly after his release on his second arrest, Ozdemir returned to the home and armed with a friends semi-automatic handgun, shot her multiple times. He then turned the gun on himself. Mr. Ozdemir died from a self-inflicted gunshot wound to the head.

My office's investigation focused on determining the exact chain of events leading up to the murder and also to identify gaps in the system that might have prevented the tragedy. My office identified several issues in this case. The one I will focus on this morning is the bail bondsman's ability to bond out Mr. Ozdemir without obtaining any monetary compensation from the accused.

A troubling factual allegation in this matter involves the ability of Mr. Ozdemir's bail bondsman to obtain his release without receiving any payment whatsoever. Normally, a professional bondsman obtains a premium of between 7% and 10% of the bond posted in exchange for a suspect's release. Under the United States Constitution, bail must be reasonable and is designed to assure a defendant's future appearance in court. Police and the courts are required by statute to take a number of factors into consideration when determining the amount of bond to be set in any particular case including reasonably assuring the safety of other persons involved in the case, see C.G.S. §54-64a(2). Currently, Connecticut state law, C.G.S. §29-151 does not prevent a professional bondsman from posting a bond for an arrestee and not taking any fee. This statute merely provides a maximum allowable percentage fee but not a minimum required fee. Theoretically, an arrestee could obtain his release on a one million dollar bond without providing any money to anyone if a bondsman is willing to post the bond for free. This is currently a business decision made by a private party who has no responsibility to weigh the significant public safety risks associated with his decision. The bondsman is also not

currently required to immediately fill out any paperwork outlining the contractual relationship between the parties.

In the Ozdemir case, police set a $25,000.00 bond based on the seriousness of the charges, the repeated activity against the victim, the defendant's current criminal record and other factors. Under normal circumstances, the defendant would have had to raise $2500.00 to pay the bondsman prior to his release or provide $25,000 cash himself to the police. His ability to immediately be released prevented any cooling off period and allowed him to immediately leave the police department and obtain the handgun used in this homicide.

An area of major concern in HB 6629 is the legalization of "premium finance arrangements" which will allow bail bondsmen to accept only a portion of the percentage required by law and accept a promissory note for the remainder of the fee in exchange for the accused release. As currently written, section 19 (b) of the bill will allow the bondsmen to accept only 35% of their fee upfront and enter into a civil promissory note for the other 65% of the fee. This is simply legalized undercutting which is the main problem uncovered in our investigation of the Rasim murder-suicide. Under this scheme, a person with a $25,000 bond as set in the Rasim case will have to post only $875.00 (35% of the 10% total fee required by law) to obtain his release.

Furthermore, this portion of the bill as written is for all intents and purposes unenforceable. Section 19 (b) of the bill lists many prohibited activities by bail bondsmen but does not specify any penalties for non-compliance. Also, how is the Insurance Department supposed to enforce the requirement that the entire fee be collected within 17 months? The bail bondsmen are supposed to make "diligent efforts" to collect the debt yet there is no definition for what "diligent efforts" means. Are they allowed to settle the civil suit for less than the full amount owed? What are they to do with the civil suit if the defendant is in jail as a result of a conviction for the offense? Civil cases can take two to three years to resolve, who is watching the end result? The simple answer is no one will be able to keep track of these arrangements and they will simply be another way for undercutting to occur.

Our current system, where an individual can post only a nominal amount and be released on bond has had an unexpected consequence: bail inflation. This problem has created a system where no one knows how much a person needs to post to be released from pre-trial incarceration. Prosecutors, Judges and Bail Commissioners increase the recommended amounts in some cases to attempt to guard against this problem. Simply put, right now the numbers are not real, it's like monopoly money. Just this past February, in my court, an individual failed to appear on a serious armed robbery. At his arraignment, it was pointed out it was a dangerous offense and he was a serious risk of flight because he was a Polish born legal alien. The Judge set a $200,000 bond. One month later, when he failed to appear for court we found out that his family only had to post $2000 or 1% of his bond to secure his release. These types of "premium finance arrangements" will only exacerbate this problem. The rule should be simple: the defendant should have to pay a flat percentage of the bond upfront to the bail bondsman to obtain his release.

Thank you for allowing me to write to you on this important topic. I would be happy to answer any questions that committee members may have.